

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

## ENCARNACION SALAS, IV,

CASE NO. 23-cv-1022

Plaintiff,

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
OVERRULING OBJECTIONS

WASHINGTON ATTORNEY  
GENERAL,

Defendant.

This matter comes before the Court on the Report and Recommendation of the Honorable Theresa L. Fricke, United States Magistrate Judge, and Petitioner Encarnacion Salas's objections to the Report and Recommendation ("R&R"). Dkt. Nos. 22, 23. Judge Fricke recommended the dismissal of Salas's petition for several reasons, including the fact that it was untimely. Dkt. No. 23. After a de novo review of the petition, the R&R, Salas's objections, and being otherwise fully informed, the Court adopts the R&R and DISMISSES Salas's habeas action for the reasons stated below.

Salas filed a habeas petition under 28 U.S.C. § 2241, arguing that his retrial and state court conviction for second degree murder involved prosecutorial

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OBJECTIONS 1

1 misconduct and constituted a “failure of due process.” Dkt. No. 15 at 3. Salas  
2 appealed his conviction to the Washington Court of Appeals, which affirmed his  
3 conviction. Dkt. No. 20-1 at 17-43. The Washington Supreme Court denied his  
4 petition for discretionary review, and the Court of Appeals issued a mandate on  
5 October 12, 2021. Salas did not petition for a writ of certiorari to the United States  
6 Supreme Court, so his direct appeal became final under the Antiterrorism and  
7 Effective Death Penalty Act (AEDPA) on January 4, 2022. Salas did not file a  
8 Personal Restraint Petition.

9 Thus, Salas had one year from January 4, 2022, to file his federal petition for  
10 a writ of habeas corpus, but he did not file until July 7, 2023—a little over six  
11 months too late. Dkt. No. 22 at 2-4. As a result, the R&R concluded that Salas’s  
12 petition was time-barred. *Id.* Even if the petition were not time-barred, the R&R  
13 also concluded the Court lacks personal jurisdiction because the petition improperly  
14 named an institutional respondent (i.e., Washington Attorney General) as opposed  
15 to the state officer having custody over Salas. *Id.* at 5-6. Finally, the R&R found  
16 that a certificate of appealability should not issue because no jurist could disagree  
17 with the Court’s evaluation of Salas’s claims.

18 In response, Salas restates the law and argues the one-year statute of  
19 limitations under AEDPA for federal habeas petitions is “irrelevant because petition  
20 28 USC 2254 [sic] was filed.” Dkt. No. 23 at 3. Salas makes no attempt to argue the  
21 limitations period was tolled, and he fails to address the portion of the R&R  
22 concluding that the Court lacks personal jurisdiction over the named Respondent.  
23 Likewise, he does not argue against the denial of a certificate of appealability.

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1       The Court must “make a de novo determination of those portions of the report  
2 or specified proposed findings or recommendations to which objection is made.” 28  
3 U.S.C. § 636(b)(1)(C). The Court “may accept, reject, or modify, in whole or in part,  
4 the findings or recommendations made by the magistrate judge.” *Id.*

5       Contrary to Salas’s claims, the one-year statute of limitations under Section  
6 2244(d)(1) for his federal habeas petition is very much relevant, as the R&R  
7 thoroughly explains. The mere fact that he filed a federal petition six months too  
8 late does not excuse the fact that the limitations period had already expired, as  
9 Salas seems to suggest. Moreover, as the R&R concluded, failure to name the proper  
10 respondent further dooms Salas’s petition. *Smith v. Idaho*, 392 F.3d 350, 356-57  
11 (9th Cir. 2004) (petitioner for habeas corpus relief under 28 U.S.C. § 2254 must  
12 name state officer having custody of him or her as respondent). Salas’s requested  
13 evidentiary hearing will not change this outcome, so the Court finds that a hearing  
14 is unnecessary. For the same reason, Salas’s “motion to be present for noting,”  
15 presumably to argue his objections, and his request for a certificate of appealability  
16 are also denied. Dkt. No. 24.

17       For these reasons, the Court ORDERS:

- 18       1. The Court ADOPTS the Report and Recommendation. Dkt. No. 22.
- 19       2. Salas’s petition and this matter are DISMISSED with prejudice as  
20           untimely and for lack of personal jurisdiction.
- 21       3. Salas is DENIED a certificate of appealability.
- 22       4. Salas’s motion to be present for noting is DENIED. Dkt. No. 24.

1           5. The Clerk is directed to send copies of this Order to the parties and Judge  
2           Fricke.  
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4           Dated this 17th day of April, 2024.

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7           Jamal N. Whitehead  
8           United States District Judge  
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